THE

MADRAS LAW JOURNAL.

II] OCTOBER [1945

ON DEMAND MORTGAGE BONDS—LIMITATION

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A recent Full Bench decision, *Venkitaswami Chetty* v. *Ramalingam*[1], lays down that when a mortgage bond provides that the mortgage money shall be payable 'on demand' the money becomes payable at once and limitation starts from the date of the bond and not from the date of demand by the mortgagee for the amount.

It is submitted that the Full Bench decision is opposed to the Privy Council decision in *Nilkanth Balwant Natu* v. *Vidya Narasinh Bharati Swami*[2], where the point directly fell to be decided. The action in the Privy Council case was for recovery of the mortgage amount by sale of the mortgaged properties. The mortgages sued on were executed between the years 1840 and 1844. Under the mortgages it was agreed to pay interest on the mortgage amount at the rate of twelve annas per cent. per mensem, and for the repayment of the debt four inam villages of the mortgagor were mortgaged and the total revenue of the four villages were assigned in mortgage to the mortgagee. The deed contained certain clauses as to management of the mortgaged properties. It was found that the mortgagee or his successor-in-interest actually went into possession of the mortgaged properties and received the rents and profits therefrom. It was established, however, that after 1859, the mortgagee did not collect the rent of the mortgaged properties. The mortgagors contended that the suit was barred by limitation. It was argued on their behalf that the cause of action arose in 1859 or 1860, when the plaintiffs' predecessors ceased to be in possession of the mortgaged properties, that the Limitation Act No. XIV of 1859 was then in force and that by reason of section 1 (16) the suit was out of time in as much as it should have been brought within the period of six years from the time the cause of action arose. Reliance was also placed upon Article 132 of the Limitation Act of 1871 which is in terms similar to Article 132 of the Limitation Act of 1908. The Privy Council rejected the plea of limitation raised by the mortgagor-defendants and the plaintiff was given a decree for sale of the mortgaged properties. The Privy Council observed as follows:

> "In the first place the plaintiffs or their predecessors were not bound by the terms of the mortgage to enter into possession of the mortgaged properties and to apply the rents and profits towards the payment of the debt, though they had the power to do so; and the mere fact that the mortgagee permitted the mortgagor to receive the rents and profits in and from 1860 did not give rise to a cause of action."

1. (1945) 1 M.L.J. 238.
2. (1930) 59 M.L.J. 379: L.R. 57 I.A. 194: I.L.R. 54 Bom. 495 (P.C.).

"In the second place" their Lordships observe—and this seems to be the *ratio decidendi* of the decision :

" there was no specific time fixed for the repayment of the debt, and their Lordships are of opinion on the facts of this case, that the money did not become due and the cause of action did not arise until demand for the payment of the mortgage debt was made by the mortgagees and it was refused by the mortgagor. Their Lordships' attention has not been drawn to any evidence of any such demand and refusal prior to the institution of the suit and the filing of the written statement by the defendants. Consequently they are of opinion that the suit is not barred by limitation."

It is clear that the mortgage bonds in the Privy Council case were on-demand bonds. There was no demand and refusal prior to suit and in the view which the Privy Council took, no question of limitation could possibly arise. Evidently the Privy Council treated the suit itself as a demand for the mortgage money.

This Privy Council decision seems to be directly in point. It looks as if this important pronouncement of the Privy Council was not brought to the notice of the learned Judges of the Full Bench.

The decision of the Privy Council in *Nilkanth Balwant Natu* v. *Vidya Narasinh Bharati Swami*[1], is in consonance with the law as stated by the Madras High Court in *Swami Rao* v. *Official Assignee, Madras*[2]. In the latter case it was held that the words " on demand " or words of similar import when they occur in a mortgage bond should be understood as making a demand necessary for the mortgage money to become payable and that time runs from the date of the demand. The Full Bench distinguish this case as not being one dealing with a plea of limitation and as one dealing merely with the effect of a plea based on Order 2, rule 2, Civil Procedure Code. The Court was no doubt dealing with a plea in bar of Order 2, rule 2, but as the learned referring Judges Wadsworth and Patanjali Sastri, JJ., observe, the point turned on whether the principal amount had ' become due ' when the prior suit for interest alone was filed and the decision is directly in point. The mortgage bond contained a covenant for payment of interest by the 5th of every month besides providing that the principal and interest shall be paid whenever demanded. The learned Judges (Coutts-Trotter and Krishnan, JJ.) held that a demand was necessary before the mortgage money became payable and no demand having been made before the institution of the prior suit, Order 2, rule 2 did not apply. The following observations of Justice Krishnan are apposite :

" It is quite clear that here we have two independent covenants and it leaves it open to the mortgagee to call in his mortgage money whenever he likes or to leave it under mortgage with the mortgagors, but the right to get interest every month is specifically provided for and requires no demand whatever, for interest is payable independently of demand on the 5th of every month . . . . No demand was necessary to bring a suit for interest."

The learned Judges held that on the date of filing the first suit for interest alone the principal amount of the mortgage money had not become due, the mortgagee not having exercised his option of calling it in.

The learned Judges of the Full Bench refer to two decisions—*Kamalambal* v. *Purushotham Naidu*[3], and *Balasubramania Chetty* v. *Manicka Chetty*[4]—apparently as supporting their view. The former is not very helpful. The learned Chief Justice *assumed*, that being an on-demand bond, limitation began to run from the date of the execution of the mortgage bond. Apparently the point was not disputed or challenged by the plaintiff-mortgagee and the judgment contains no discussion. The argument urged on behalf of the defendant was only that because the mortgage document contained a provision for giving three months' notice for exercising the power of sale as provided in section 69, sub-clause 2 of the Transfer of Property Act, the cause of action arose only on the expiry of the three months of giving the requisite notice. His Lordship took the view that the provision regarding the giving

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1. (1930) 59 M.L.J. 379 : L.R. 57 I.A. 194 : I.L.R. 54 Bom. 495 (P.C.). 703.
2. (1925) 49 M.L.J. 474 : I.L.R. 48 Mad.
3. (1934) 67 M.L.J. 499.
4. (1938) M.W.N. 113.

of notice before exercising the right of sale did not create a condition precedent at all to the claim for money, but merely referred to the exercise of the power of sale which the mortgagee has. The money must be claimed within the period of limitation which according to His Lordship commences from the date of the bond, but the power of sale is not to be exercised until the statutory notice is given and there has been a default to comply with it. The decision in *Balasubramania Chetty* v. *Manicka Chetty*[1] far from supporting the view taken by the Full Bench lays down that limitation in the case of a mortgage document where the provision is to pay the amount on demand commences only from the date of demand. In that case, the plaintiff sought a personal decree for Rs. 16,000 against his mortgagors. The covenant in the mortgage deed was to pay the mortgage amount on demand. The mortgage deed was dated 23-10-1925. The mortgagee made a demand for the amount by a notice on 4th August, 1933. The suit was filed on 14-8-1933. It was held that the suit was not barred by limitation, as limitation commenced only from the date of demand.

The Privy Council decision in *Lasa Din* v. *Mt. Gulab Kunwar*[2], to which reference is made by the Full Bench does not seem to be relevant or helpful in considering the point in question. The mortgage bond in that case was not an on-demand bond. In that case the principal money was payable at the end of six years, but there was a clause which empowered the mortgagee to claim the principal and interest before the expiration of the stipulated period, in default of payment of interest annually. No interest was ever paid under the mortgage and the mortgagee brought a suit to enforce his security within 12 years from the expiry of the stipulated period (six years), but more than 12 years from the default in the payment of interest. It was held that the provision in question was inserted in the mortgage deed for the benefit of the mortgagee and gave him an option either to enforce his security at once on default by the mortgagor in the payment of interest or to wait for the full term of the mortgage. If the mortgagee did not exercise the option the money secured would become due only at the end of the stipulated period.

The decision of the Madras High Court in *Secretary of State* v. *Radhika Prasad*[3] is very instructive in regard to understanding the correct import of the words "on demand" when used in mortgage bonds and other documents. The learned Chief Justice observed as follows :

> "According to the law of England when money is payable on demand and nothing further is said it is payable at once and without demand ; and time under the Statute of Limitation begins to run at once. The most common instances of the application of that principle are of money lent repayable on demand or at request and promissory notes payable on demand (*Norton* v. *Ellam*).[4] It is worth noticing that the principle of the English Common Law has been held not to apply to cases in the moffussil—*Tarinee Parsad* v. *Pran Kishen Banerji*[5]. However, the principle is in terms applied by articles 59 and 73 of the Indian Limitation Act to cases of money lent and bills of exchange and promissory notes payable on demand. But it is not extended to any other case."

The action in the case in *Secretary of State* v. *Radhika Prasad*[3], was based on a promissory note payable on demand ; nevertheless their Lordships held that Article 73 of the Limitation Act was not applicable to the case, because the so-called promissory note was not a promissory note within the definition of the Limitation Act and therefore the amount did not become due until after demand and the suit was not barred by limitation.

The Indian Legislature has applied the technical or common law meaning of the words "on demand" (forthwith, immediately) only to the two classes of cases mentioned in Articles 59 and 73 of the Limitation Act. In all other cases, whenever money is payable on demand, it is payable only on demand ; in other words, the words "on demand" are not mere words, but constitute an important term of the contract and a demand should be made before the liability arises and limitation

1. (1938) M.W.N. 113.
2. (1932) 63 M.L.J. 187 (P.C.).
3. (1922) 44 M.L.J. 685 : I.L.R. 46 Mad. 259.
4. 2 M. & W. 461.
5. 14 Suth. W.R. 224.

would commence only from the date of demand. *Cf.* the starting point mentioned in column 3 of Articles 59, 60 and 73 of the Limitation Act. It will be observed that in all these three articles, the words "on demand" occur. Article 59 relates to suits for recovery of money lent under an agreement that it shall be payable on demand. Article 73 relates to suits on bills of exchange or promissory notes payable on demand. Article 60 relates to suits for money deposited under an agreement that it shall be payable on demand including money in the hands of his banker so payable. It will be observed that although money is payable only on demand under the terms of the contract, the starting point of limitation in cases falling under Articles 59 and 73 is the date of the loan or the bill or promissory note as the case may be, while the starting point in cases falling under Article 60 is only the date of demand and not the date of the deposit or loan.

Under the Limitation Act of 1859, the starting point of limitation for suits for the recovery of money lent was the date when the debt 'became due.' It was held in some cases which arose under that Act that where money was payable on demand, the technical meaning of the words "on demand" in the English Law did not apply to the mofussil in India and that an actual demand was necessary before the debt could be said to become due. *Tarinee Parsad* v. *Pran Kishen Banerji*[1]. The Limitation Act of 1871 gave effect to this view by providing both in article 58 (present article 59) and in article 72 (present article 73) that limitation begins from the date of demand. But the Act of 1877 adopted in articles 59 and 73 (corresponding to articles 59 and 73 of the Act of 1908) the technical or common law meaning of the words "on demand" (forthwith, immediately) when used with reference to debts and it was provided that time began to run under these articles from the date of the loan or the bill or promissory note.

It is submitted that the Full Bench decision requires re-consideration.

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1. (1870) 14 Suth. W.R. 224 : 6 Beng. L.R. 160 (D.B.).